

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

Latasha Holloway, *et al.*,

Plaintiffs,

v.

City of Virginia Beach, *et al.*,

Defendants

Civil Action No. 2:18-cv-0069

**MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO EXCLUDE
PLAINTIFFS' SUPPLEMENTAL EXPERT REPORTS AND OPINIONS**

PLAINTIFFS' EXHIBIT 6

Supplemental Deposition of Plaintiffs' Expert Mr. Anthony Fairfax

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

LATASHA HOLLOWAY and GEORGIA ALLEN,

Plaintiffs,

CIVIL ACTION NO.
2:18-cv-00069

v.

CITY OF VIRGINIA BEACH, et al.,

Defendants.

DEPOSITION UPON ORAL EXAMINATION
OF ANTHONY E. FAIRFAX,
TAKEN ON BEHALF OF THE DEFENDANTS

Hampton, Virginia

June 24, 2020

VOLUME II

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I N D E X

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EXHIBITS

NO.	DESCRIPTION	PAGE
6	Supplemental Report of Anthony E. Fairfax	6
7	Plaintiff's Mod Plan (10 Districts)	6
8	Plaintiff's Illustr Plan 10 Dist Alt 2	6
9	United States Census 2010	6
10	United States Census 2020	6

1 Deposition upon oral examination of
2 ANTHONY E. FAIRFAX, taken on behalf of the
3 Defendants via teleconference before Kathleen Beard
4 Adams, CCR, RPR, CRR, an e-Notary Public for the
5 Commonwealth of Virginia at large, commencing at
6 10:20 a.m. on June 24, 2020, at 16 Castle Haven
7 Road, Hampton, Virginia; and this in accordance with
8 the Federal Rules of Civil Procedure.

9 - - - - -

10 (Fairfax Exhibits 6 through 10 were
11 pre-marked for identification.)

12 (The deponent was sworn.)

13 (Off-the-record discussion)

14 MR. BOYNTON: Well, sorry for that bit
15 of fun, everybody. I'm trusting, Mr. Fairfax, you
16 can hear me.

17 THE DEPONENT: Yes.

18 MR. BOYNTON: And, Annabelle, same
19 thing?

20 MS. HARLESS: Yep.

21 MR. BOYNTON: Okay. Kathy, I -- I think
22 we'll just need to make a notation that I'm on
23 Jerry's line, so to speak, and Jerry is going to be
24 observing on my line, or listening.

25 THE REPORTER: Okay.

1 MR. BOYNTON: So I think I have what I
2 need if we're ready to proceed otherwise. Thank
3 you, everybody, for your patience. Okay.

4 MS. HARLESS: Really quick before we
5 start I'd just like to put on the record similar to
6 what we did in Dr. Spencer's deposition that we've
7 agreed to extend Mr. Fairfax's deposition today to
8 cover his supplemental report from March 2020, but
9 this is not an opportunity for counsel to re-ask
10 questions about the first two reports or engage in
11 any lines of questioning about those reports. Thank
12 you.

13 MR. BOYNTON: The -- the other piece of
14 this is that everybody has agreed to waive any
15 objections that might otherwise exist as to deposing
16 Mr. Fairfax remotely and particularly deposing him
17 in a context where the court reporter is not present
18 in the same room as Mr. Fairfax, correct?

19 MS. HARLESS: Correct.

20 MR. BOYNTON: Has the witness been sworn
21 on the -- on the video?

22 THE REPORTER: No.

23 Would you raise your right hand, Mr.
24 Fairfax?

25

1 ANTHONY E. FAIRFAX, having been first
2 duly sworn, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BOYNTON:

5 Q. Good morning, Mr. Fairfax. We've met
6 once before. My name again is Chris Boynton. I
7 work with Jerry Harris and Joe Kurt as well as Ka --
8 Kath -- -- Katherine McKnight representing the City
9 of Virginia Beach and the defendants in this case.
10 How are you this morning?

11 A. I'm doing well.

12 Q. Good. Good to hear it.

13 A couple of ground rules that I'll go
14 over that I think we discussed previously. If you
15 will allow me to complete my question, then I will
16 allow you to complete your answer so the court
17 reporter does not have to jump back and forth.

18 Also if at any point I've asked a
19 question that is -- that you don't understand or
20 it's not well-worded, please let me know. I'll be
21 happy to rephrase.

22 Also please respond verbally with yeses
23 or nos where the question asks for that. Nods and
24 gestures are not things the court reporter can take
25 down.

1 Finally, if you give an answer and it
2 occurs to you later on in the deposition that the
3 answer you gave is inaccurate or incomplete, please
4 just speak up and we'll correct the record and move
5 forward.

6 Do all those work for you, sir?

7 A. Yes.

8 Q. Okay. Great.

9 Now, you -- you gave a deposition in
10 this case back in -- I think it was September 24th,
11 correct?

12 A. Yes.

13 Q. Since then have there been any changes
14 in your credentials, experience, background,
15 anything along those lines?

16 A. Well, my résumé in -- in -- didn't
17 include at that particular time one of the efforts
18 that I'm working on right now currently, and that is
19 I'm -- I was hired as a districting master for the
20 City of Everett at the beginning of this year to
21 help them, advise them and guide them through their
22 first initial redistricting plan.

23 Q. Is that Everett, Washington?

24 A. Yes, city of Everett, Washington.

25 Q. And is that under court jurisdiction or

1 control?

2 A. No.

3 Q. Okay. That is purely a -- a single
4 locality with a redistricting plan?

5 A. Correct.

6 Q. Okay. Have you been designated in -- in
7 -- in -- as an expert witness in any other cases
8 since November 24th, 2019 -- I'm sorry -- September
9 24th, 2019?

10 A. No.

11 Q. Okay. Have you testified in any other
12 cases since September 24th, 2019?

13 A. No.

14 Q. Have there been any changes to your rate
15 of compensation in (audio interruption) --

16 A. Could you repeat that? You got cut off.

17 Q. Sure. Have there been any changes to
18 how you are being compensated in this case since
19 September --

20 A. No.

21 Q. -- 24th, 2019?

22 Okay. You're still being paid on an
23 hourly basis; is that correct?

24 A. Correct.

25 Q. And I believe the rate was \$180 an hour.

1 Is that correct?

2 A. Correct.

3 Q. Okay. For purposes of this deposition
4 we will make reference to various reports that you
5 have prepared. Exhi -- have you had a chance to
6 review the exhibits I sent you yesterday?

7 A. Yes. I went through them.

8 Q. Okay. What we attempted to do was have
9 the first five numbered exhibits have the same
10 numbers that they had from your first deposition and
11 then add new exhibits 6 through 10. Is that correct
12 from your review?

13 A. That -- that seems to be correct.

14 Q. Okay. Well, when I use the term initial
15 or original report that will be referring to Exhibit
16 2, which is dated July 15th, 2019. Do you agree
17 with that?

18 A. Yes.

19 Q. And when I use the term rebuttal report
20 I'll be referring to Exhibit 4, which was August
21 26th, 2019, correct?

22 A. Yes. Correct.

23 Q. And when I say supplemental report I'll
24 mean and be referencing Exhibit 6, which is the
25 March 16th, 2020 report, correct?

1 A. Correct.

2 Q. Okay. So what were the scope of
3 services that you were asked to perform for the
4 supplemental report?

5 A. I was asked to review or clarify whether
6 the plaintiffs' residences were included in the
7 Hispanic, black or Asian combined -- and Asian
8 combined districts for the demonstrative plans that
9 I created. And specifically it was to look at
10 whether Ms. Holloway's address was contained in all
11 of the plans and Ms. Allen's address was contained
12 in none of the plans. Also I reviewed whether
13 Ms. Holloway's new address was included in the plans
14 as well. The second part was to see if one plan or
15 more could be modified to include Ms. Allen's
16 address, and so three plans were included or
17 modified. And then finally it was to update the
18 plans with the most recent American Community
19 Survey, the five-year.

20 Q. And is that the 2014 through 2018 series
21 you're referring to?

22 A. Yes. Correct.

23 Q. Other than the changes that you -- or
24 modifications you've referenced, did you make any
25 other changes or modifications to the maps as

1 provided in your supplemental report compared to the
2 rebuttal report?

3 A. Did I make any modifications or changes
4 to the plans?

5 Q. The plans. Other than to include
6 Georgia Allen's address. Now, ob -- obviously, the
7 ACS data just tells you how they perform arguably,
8 so they don't -- the ACS data you used doesn't
9 change the plans, correct?

10 A. Correct. Importing them. Exactly.

11 Q. Okay. So when you -- when you modified
12 the plans -- I believe you testified you modified
13 three plans -- other than incorporating Georgia
14 Allen's address into a -- a majority HBA CVAP
15 district what else did you do to change those plans?

16 A. Each plan had you could say three
17 changes really. The first plan, which was the
18 Illustrative Plan, actually had two additions and
19 one removal. The second plan had another two
20 additions and one removal. And the third had three,
21 in essence, block groups that were added.

22 Q. And so in each case when you say an
23 addition or a removal you're referring to a block
24 group?

25 A. No. Referring to just area. It may not

1 be a block group.

2 Q. Areas?

3 A. The -- the third one, remember, was a --
4 a -- a plan that was wholly using block groups to
5 create the district.

6 Q. The --

7 A. The --

8 Q. -- only alt was at a block-group level,
9 correct?

10 A. Alt 2. Correct.

11 Q. Modified Illustrative Plan and Modified
12 Alt 1 were not at block-group levels, correct?

13 A. That's correct.

14 Q. What levels were they at?

15 A. They were mainly at the VTD le -- level,
16 but there were some split voting tabulation
17 districts.

18 THE REPORTER: I'm sorry.

19 BY MR. BOYNTON:

20 Q. Okay. Well --

21 THE REPORTER: I'm sorry. I couldn't
22 understand you.

23 A. There were mainly at -- they were mainly
24 at the VTD level, and VTD standing for voting
25 tabulation district, but there were some split VTDs.

1 BY MR. BOYNTON:

2 Q. And -- and VTDs, for the record, are
3 voting tabulation districts, correct?

4 A. Correct.

5 Q. So you -- you will agree with me then
6 that none of the six plans contained in your
7 rebuttal report contains Georgia Allen's residence
8 address in a majority HBA CVAP district, correct?

9 A. That is correct.

10 Q. And do you agree with me that the
11 Illustrative Plan or map that pro -- was provided in
12 your original report did not contain Georgia Allen's
13 residence address in a majority HBA CVAP district,
14 correct?

15 A. Correct.

16 Q. Okay. Why did you not include Ms.
17 Allen's residence address in the two prior reports
18 in the districts that you drew?

19 A. Well, I tried to recall where the issue
20 or the problem began, and -- and what I -- I think
21 happened was when I first started writing the report
22 I imported the new ACS data at that particular time,
23 and -- and after I imported it or processed it I
24 made some slight modifications to the plan. And I
25 believe that's when I left Ms. Allen's address out,

1 when I made those slight modifications to the plan.

2 Q. But -- and Ms. Allen's address is the
3 same as it was going back to 2018, correct?

4 A. Correct.

5 Q. And you drew the map that was included
6 in the amended complaint, correct?

7 A. Correct.

8 Q. That map included or purported to
9 include Ms. Allen's address, correct?

10 A. Correct.

11 Q. So nothing on Ms. Allen's address
12 changed for purposes of your analysis after the
13 amended complaint was filed?

14 A. Correct.

15 Q. So would you agree that the three
16 modified plans for District 2 in the supplemental
17 report were modified for the sole purpose of
18 correcting your error of not including Georgia
19 Allen's residence address in the plans contained in
20 your original report and your rebuttal report?

21 MS. HARLESS: Objection to form.

22 BY MR. BOYNTON:

23 Q. You can answer.

24 A. That was the purpose of the
25 modifications.

1 Q. Were there any other purposes of
2 modifying those three plans in the supplemental
3 report?

4 A. No. No.

5 Of course, as I was developing them I
6 was using traditional redistricting criteria, so
7 they were al -- always objectives to creating the
8 plan.

9 Q. Did you have a purpose other than
10 including Georgia Allen's address in generating the
11 supplemental reports and plans?

12 A. No. No. The -- the purpose really was
13 to see if her address could be contained with
14 minimal modifications, and that's what I concluded.

15 Q. Now, even though your supplemental
16 report shows only the two HBA CVAP majority
17 districts, you did draw all ten districts as part of
18 your process in preparing the supplemental report,
19 correct?

20 A. Correct.

21 Q. Is there a reason you did not include
22 the other districts fully in the -- in the -- in the
23 supplemental report?

24 A. No. There -- there was a --

25 MS. HARLESS: Objection to form.

1 BY MR. BOYNTON:

2 Q. You can answer.

3 A. Most of the districts remained the same.
4 There were some slight changes on the adjacent
5 districts here and there, but nothing that would
6 dramatically change the perception of the districts
7 or the -- the configurations of the districts
8 dramatically.

9 Q. So what was your reason for not
10 including the other eight districts in the plan that
11 you illustrated in your supplemental report?

12 MS. HARLESS: Objection to form.

13 BY MR. BOYNTON:

14 Q. You may answer.

15 A. Because most of the districts did not
16 change.

17 Q. Now, you -- you -- you have on page 2 of
18 your supplemental report, and -- and please feel
19 free to turn to it --

20 A. So I should -- I can bring that report
21 up?

22 MS. HARLESS: Can you give us an --

23 MR. BOYNTON: Yes.

24 MS. HARLESS: -- exhibit number?

25

1 BY MR. BOYNTON:

2 Q. It's Exhibit 6. And it's the second
3 page. Are you there?

4 A. Not yet.

5 Okay. I'm here now.

6 Q. Okay. At the very bottom you have a
7 footnote, footnote 1, and it says, "As in my two
8 prior reports, in this supplemental report I include
9 the HBACVAP percentages for both Hispanic, Black
10 alone, and Asian alone individuals as well as
11 Hispanic, Black, and white (mixed race), and Asian
12 alone individuals."

13 Where did you get the data for those
14 percentages for each race or origin group?

15 A. They come from the Census Bureau, the
16 ACS data, and, of course, it's disaggregated down
17 and built back up to the district level.

18 Q. Okay. And so is there -- when you're
19 pulling down ACS data, I assume electronically, or
20 is it in printed form when you download it?

21 A. Oh. It's in digital form. You have to
22 use digital form.

23 Q. So there is one number for each block
24 group for Hispanics?

25 MS. HARLESS: Objection to form.

1 BY MR. BOYNTON:

2 Q. Well, I'm going to ask you to explain to
3 me, sir, what -- when you're pulling data down how
4 is it represented? How is it visually represented
5 to you?

6 A. It -- it's represented at the block
7 group level.

8 Q. I understand, but does it -- I mean is
9 it a single number in the block group for all
10 Hispanics of all national origins?

11 A. It -- it is a -- what they call a point
12 value that they have for the Hispanic population.

13 Q. Does it provide a point value for
14 Hispanic subgroups, like Filipino?

15 A. No.

16 Q. Okay. Does it provide a -- a -- a
17 subgroup for Hispanic origins that are from
18 Colombia?

19 A. No.

20 Q. So it simply gives you an all-Hispanics
21 number; is that accurate?

22 A. That's correct.

23 Q. Okay. Does the same apply as to people
24 of -- with Asian origin?

25 A. Correct.

1 MS. HARLESS: Objection to form.

2 BY MR. BOYNTON:

3 Q. You get one number for all Asians
4 regardless of national origin, correct?

5 A. Correct.

6 Q. You don't have a separate one -- again I
7 -- I mis -- misspoke -- for Filipino, but Filipino
8 Asians --

9 A. Correct.

10 Q. -- is that correct?

11 You don't get a separate number for
12 people who are of Japanese American descent?

13 A. Correct.

14 Q. It's only one number for all Asians?

15 A. Correct.

16 Q. Okay. And for -- for black there is
17 both people who identify as black in the survey and
18 there are -- there's a fourth number or fourth
19 column of people who identify as black and white; is
20 that correct?

21 A. That's correct.

22 Q. Okay. What about Asian and white? Is
23 that a category that the data has provided?

24 A. Yes.

25 Q. Okay. So -- but you did not use the

1 Asian and white data?

2 A. Correct.

3 Q. And you didn't -- is -- is there a
4 category of data that's Hispanic and white?

5 A. No. No. Not that I recall.

6 Q. It's only Asian and white?

7 A. Correct.

8 Q. Okay.

9 A. They isolate -- I'm sorry.

10 Q. Please answer. I'm sorry.

11 A. That's all right. They -- they isolate
12 Hispanic and you use the other what's called
13 non-Hispanic race categories. And that's how you
14 can come up with 100 percent.

15 Q. Are -- are you aware whether the ACS
16 makes any in its questioning differentiation between
17 Hispanics of Latino or of Spanish subgroups?

18 A. I -- I'm not sure. I'm not sure whether
19 they try to catalog that.

20 Q. Are you aware of whether the ACS
21 question -- survey questionnaire tries to capture
22 Asian origin subgroups?

23 A. I'm not sure --

24 Q. Okay.

25 A. -- whether they do or not.

1 Q. Have you ever seen the ACS survey
2 questionnaire?

3 A. Yes. Yes, a while back.

4 Q. Okay. So you did not look at it in
5 preparation for this case?

6 A. No. No.

7 Q. And in -- for -- for -- from the -- the
8 end-user data it's not broken out into Asian
9 subgroups or Hispanic subgroups, correct?

10 A. That's correct.

11 Q. Okay. If you wanted that data, could
12 you obtain it from ACS?

13 A. Well, if -- if the question is on there,
14 potentially you could request a supplemental report,
15 but that's a little bit unclear of how well that
16 would bode for the entire city. So you may be able
17 to find some information data for it, enough samples
18 for a particular area inside the city of Virginia
19 Beach, but maybe not for the entire area because of
20 the sampling -- the way they do sampling.

21 Q. But, sitting here today, you made no
22 effort to pull down Asian or Hispanic subgroup
23 information from the ACS?

24 A. Correct.

25 Q. Okay.

1 A. And -- and let me -- let me just say
2 that as normal convention that's used in the
3 redistricting process that's not done. You know,
4 the DOJ had guidance back in 2000 and they sort of
5 provided some guidance on the racial combination
6 that you would use, and they didn't break it up into
7 subgroups.

8 Q. Okay. So turning to page 3 of your
9 report, I -- I think we've already discussed A of
10 your Summary of Opinions. I'd like you to focus on
11 B of your Summary of Opinions. Do you have the
12 document in front of you?

13 A. Yes, I do now.

14 Q. On page 3 of your supplemental report,
15 subheading IV, Summary of Opinions, b), you state,
16 "With minor modifications and insignificant district
17 statistical alterations, the current addresses of
18 both Plaintiff Georgia Allen and Plaintiff Latasha
19 Holloway could, at least, be contained within
20 majority-HBACVAP District 2 of the Illustrative Plan
21 as well as District 2 in the Alternative Plan 1 and
22 Alternative Plan 2. I did not attempt to modify
23 Alternative Plans 3, 4, or 5 for this supplemental
24 report."

25 Is that a correct statement of what you

1 wrote, sir?

2 A. That's correct.

3 Q. Okay. And so you -- sitting here today,
4 Alternative Plans 3, 4 or 5 do not include Georgia
5 Allen's residence address in an HBA CVAP majority
6 district, correct?

7 A. That is correct.

8 Q. Why did you not attempt to modify those
9 three districts?

10 A. I didn't see the need to -- to do those.
11 I wanted to show that the original Illustrative Plan
12 could contain Georgia Allen's address. The
13 Alternative 1 could contain it because of the issues
14 raised by Dr. Morrison's on the borderline
15 percentage districts. And Alternative 2 plan
16 addresses the concern over the disaggregation issue
17 that Dr. Morrison has pointed to as well. And those
18 were -- the three issues, I think, were the major
19 highlights of his -- his report.

20 And so the other plans, in -- in my
21 opinion, weren't as relevant as those; however, I'm
22 -- I'm fairly confident that I could modify and
23 include Alternative Plans 3, 4 and 5.

24 Q. But to date you have not done it in --
25 in reports, correct?

1 A. Correct.

2 Q. And how far down the path of modifying
3 Alts 3, 4 and 5 did you get?

4 A. Oh. I -- I didn't do it at all. I --

5 Q. You didn't touch it at all?

6 A. No. No. No. I didn't touch it at all.
7 No.

8 Q. (Audio interruption) analysis on that?

9 MS. HARLESS: I -- I'm sorry. I didn't
10 hear the first part of your question.

11 BY MR. BOYNTON:

12 Q. You did no work, no -- made no effort,
13 to look at Alt 3, Alt 4 or Alt 5 in terms of
14 including Ms. Allen's residence address in -- in
15 District 2 of those plans?

16 MS. HARLESS: Objection.

17 A. Correct.

18 MS. HARLESS: Asked and answered.

19 A. Cor -- correct.

20 BY MR. BOYNTON:

21 Q. Right.

22 A. Right.

23 Q. So what minor modifications did you make
24 in District 2 plans that you did change?

25 A. The Illustrative Plan 1 had three

1 modifications, as I mentioned before. There was a
2 modification to include the plaintiff's address, so
3 there was a slight addition of area to include the
4 plaintiff's address. There was an addition on the
5 northern end, very similar to the Alt 1 that wasn't
6 modified, to include several Hispanic, black and
7 Asian combined subdivisions that were on that
8 northern end. I noticed this on the first analysis
9 of the first report. And then there was a removal
10 of a split VTD areas to remove sev -- several census
11 blocks on -- on the sort of mid-center area of the
12 district plan.

13 The second Alternative 1 plan, the same
14 or very similar extension to include the plaintiff's
15 address, Allen -- the plaintiff Allen's address was
16 included in that.

17 Was there a question?

18 Q. I'm just listening to you talk.

19 A. Okay. I'm sorry. I thought I heard a
20 question.

21 Second, there was an addition of a area
22 or subdivision that was added in and it made the
23 district more compact. And then there was a third
24 removal down at the sort of southern western end of
25 -- of the district. And the final Alt 2 plan had

1 the addition of three block groups that were added.
2 Two block groups could have added to include the
3 plaintiff, but I added the third one to make it more
4 compact.

5 Q. Okay. And what -- what do you deem to
6 be a minor modification versus a major modification?

7 A. Well, when I look at the measurements of
8 traditional redistricting criteria and whether they
9 changed dramatically or not, and that includes the
10 compactness as well as split VTDs and statistics,
11 equal population, all -- all of them, I think, I
12 believe I remember becoming more equally populated
13 to the ideal. That's what led me to believe that
14 they were insignificant.

15 Q. Do you have a standard for what is
16 significant versus insignificant?

17 A. It's subjective for a -- plan to plan.
18 You have to just -- just like compactness is
19 subjective from jurisdiction to jurisdiction.
20 Determining that is really subjective, and you have
21 to look at what -- what the conditions are.

22 Q. So you made reference in that same
23 Summary of Opinions to insignificant district
24 statistical alterations, correct?

25 A. Correct.

1 Q. What were the statistical alterations
2 that occurred?

3 A. The compactness changed I think
4 insignificantly, and the split VTDs changed
5 insignificantly -- split VTDs changed
6 insignificantly, and equal population -- it -- it
7 changed. I -- I think that was maybe the most
8 significant change where it was improved.

9 Q. Is it your testimony that the
10 compactness improved in all three plans?

11 A. No. No. No.

12 Q. Is it your testimony that the -- the
13 number of split VTDs improved in all three plans?

14 A. No.

15 Q. Is it your testimony that equal
16 population improved in all three plans?

17 A. Yes.

18 Q. Okay. And you made no modifications to
19 any of District 1's, correct?

20 A. Correct.

21 Q. So explain to me step by step your
22 methodology in preparing the three new maps that you
23 prepared.

24 A. For the first plan the first objective
25 was to include Ms. Allen's address. And so I added

1 areas that were surrounding the district to her
2 residency in a compact fashion looking to attempt
3 to, you know, follow the roads and follow a -- a
4 configuration that would be -- make it more compact.

5 The second addition was used to add
6 those additional subdivisions, as I mentioned
7 before, in the nor -- the northern end of the
8 district that I noticed early on there was an area
9 that had an HBA community that existed up in the
10 northern end. And so I added it -- that on, a whole
11 block group, if you will, that was added to the
12 district. And then the -- the northern end -- I
13 mean, excuse me, the southern end that was removed
14 was removed to -- just to ensure that the -- and it
15 was a two-way -- rather, a split voting tabulation
16 district. So I didn't have to split an additional
17 VTD down there, but it was used to allow for the
18 District 2 -- to ensure that it was a majority
19 Hispanic, black and Asian combined district that was
20 comfortable above 50 percent.

21 Q. And that was the Illustrative Plan as
22 modified, correct?

23 A. That's correct.

24 Q. What -- what were -- what were your
25 steps in modifying Alt 1?

1 A. Alt 1 was to a certain extent similar.
2 The first addition was the -- the same additional
3 area that included the plaintiff Allen's address.
4 It was -- remained intact -- was expanded, rather,
5 and remained similar to the Illustrative Plan
6 modification.

7 There was a subdivision that was down
8 below that was added in. It was added in. It made
9 it more compact, if you will, the district compact.

10 The third was a removal of a block that
11 I had -- previously when I was early, early on in
12 the modifications I hadn't removed it because it --
13 it made sense for the district boundaries to be cut
14 that way, if you will. It didn't necessarily have
15 to occur. If -- if I didn't do it, it would have
16 been above -- the district would have been above 50
17 percent. But in the beginning of modifying it
18 appeared that it would be better configured if I
19 went the -- the path of removing versus the path of
20 not removing it.

21 Q. In Alt 1 did you add that same little
22 area in the north of the district to add or pick up
23 the HBA blocks that you're referring to?

24 A. That area was already included. That's
25 one of the modifications that I did in the Alt 1

1 plan, which was -- once again I noticed that this
2 Hispanic, black and Asian subdivision was in the
3 northern end, and so I added that to the district in
4 the first original Alt 1 plan, so I didn't have to
5 actually add it in the second.

6 Q. So it was already in Alt 1, it was not
7 already in the modified illus -- in the Illustrative
8 Plan as of the rebuttal report?

9 A. It wasn't in the --

10 MS. HARLESS: Objection to the form.
11 You can answer.

12 A. It -- it wasn't in the original
13 Illustrative Plan.

14 BY MR. BOYNTON:

15 Q. But it was in the original Alt 1?

16 A. Correct.

17 Q. What -- what were your steps in
18 preparing Alt 2 modified for the supplemental
19 report?

20 A. Alt 2 was probably the easiest one to
21 modify. It -- by including the plaintiff's address,
22 Ms. Allen's address, I added three block groups to
23 the district plan. And as I had mentioned before, I
24 could have added only two, but I wanted to make it
25 more compact and so I added a third.

1 Q. So when you're looking at HBA numbers
2 for the various blocks or block groups that you're
3 adding and subtracting from these three modified
4 districts are -- are you looking at the numbers from
5 ACS '13-'17 or ACS '14-'18?

6 A. The latest version was imported, so I
7 was utilizing the latest version, the '14-'18.

8 Q. So you -- so in drawing these three
9 modified maps you -- your baseline was ACS '14-'18;
10 is that correct?

11 A. If you could clarify what baseline was
12 or means.

13 Q. Well, you had maps that already you had
14 drawn that you were going to modify, correct?

15 A. Correct.

16 Q. Okay. So -- and in -- in preparing the
17 modification was the modification itself based on
18 ACS '14-'18 data or ACS '13-'17 data?

19 A. It was based upon the '14 to '18 data.
20 It's based upon the most recent and I assume the
21 most accurate data, and that would be the '14 to '18
22 data.

23 Q. Okay. And then you went back and
24 layered over it the ACS '13-'17 to see a comparison;
25 is that accurate?

1 A. Repeat that again. I'm sorry.

2 Q. Sure. Did you -- and you can look at --
3 I'm kind of jumping ahead a bit, but some of your
4 narrative in your reports -- in your report refers
5 to the performance of these new or modified
6 districts under ACS '13-'17, correct?

7 A. Right now I can't recall. If you have
8 anything, could you please --

9 Q. Yeah. I'll get to that in -- in
10 sequence.

11 A. -- refresh my recollection?

12 Q. All right. But in -- in drawing these
13 modifications you drew them off of ACS '14-'18,
14 correct?

15 A. I -- I would say that they became the
16 primary data reference point.

17 Q. What other data reference points did you
18 use in drawing the modifications to these three
19 districts?

20 A. You mean other than the compactness and
21 equal population and split VTDs?

22 Q. Sure. Anything other than ACS '14-'18.

23 A. Okay. Well, the reports that I just
24 mentioned, the compactness measurements, those
25 three; Reock, Polsby-Popper and Convex Hull. The

1 equal population district statistics and the split
2 VTDs. And, of course, as I mentioned before, prior,
3 in the original report, I utilized an overlay of the
4 political or the neighborhood subdivisions.

5 Q. Okay. Did you overlay actual precincts
6 on this -- on these maps?

7 A. No. We -- I think in my original report
8 I had mentioned that I was going to use VD -- VTDs,
9 or voting tabulation districts, because the
10 precincts were found to split census blocks, and the
11 more reliable unit would be VTDs, voting tabulation
12 districts.

13 Q. Did you use 2010 census data to draw
14 these plans?

15 A. I -- I -- I -- you cut out. 2010?

16 Q. Did you use 2010 census data to draw
17 these modified plans?

18 A. Correct.

19 Q. No. Did you or did you not use data
20 from the 2010 census to draw your modified plans?

21 A. The -- the boundary levels. Sure. The
22 boundary --

23 Q. Okay. In terms of actual data for HBA
24 CVAP or HBA VAP did you use 2010 census data?

25 A. The 2010 census data was included. And,

1 of course, for equal population purposes you'd use
2 the 2010 population census, but for the other
3 percentages of Hispanic, black and Asian CVAP you'd
4 use the American Community Survey, the latest
5 version.

6 Q. Did -- did you do an analysis of how
7 these modified districts perform under the 2010
8 census data?

9 MS. HARLESS: Objection to form.

10 A. No. And -- and when you refer to 2010
11 census let me say that the -- the boundaries are
12 2010 census as well. So --

13 BY MR. BOYNTON:

14 Q. Understood --

15 A. Okay.

16 Q. -- from boundaries. I'm asking you
17 about HBA VAP or CVAP, the data that was generated
18 by the 2010 census, did you overlay that data on
19 these districts and see what the percentages were of
20 HBA VAP or CVAP under 2010 census data?

21 MS. HARLESS: Objection to form. You
22 can answer.

23 A. Right. Right. The -- the 2010 census,
24 if we're speaking of the PL94-171, there is no CVAP
25 data for that. We'd have to go to the American

1 Community Survey, the five-year sample, in order to
2 get the CVAP data. So there wouldn't be an
3 equivalent dataset that would have that.

4 BY MR. BOYNTON:

5 Q. Did you take any type of dataset from
6 the 2010 census and overlay it to see performance of
7 minority voting trends in those modified districts?

8 MS. HARLESS: Objection. Asked and
9 answered.

10 BY MR. BOYNTON:

11 Q. You may answer.

12 A. No, I -- I -- I did not. It -- it --
13 the 2010 census does not include the data. CVAP
14 data. Let me be clear.

15 Q. Talking about CVAP data, what kind of
16 data does it include --

17 A. It includes the break --

18 Q. -- the 2010 census?

19 A. I'm -- I'm sorry. It includes the
20 breakdown of race and the breakdown of voting age
21 population.

22 Q. So you could have done a race voting age
23 population analysis of these districts as modified
24 using the 2010 census, correct?

25 A. That's correct, but I believe we were

1 desiring to use the citizen voting age population
2 and the most recent one, 2010 voting age population,
3 would be now ten years old.

4 Q. Understood, but I just need a simple
5 answer to a simple question. You did not use the
6 2010 census data for that purpose, correct?

7 MS. HARLESS: Objection. Asked and
8 answered.

9 A. Correct.

10 BY MR. BOYNTON:

11 Q. Thank you.

12 I -- I believe you've -- you testified
13 in -- in your earlier deposition that you had at
14 times been appointed by a court to -- as a special
15 master or otherwise to -- to draw districts in a
16 remedial plan. Is that accurate?

17 A. There was one time -- in 1990 there was
18 a team, myself and another individual, that was
19 appointed to draw the city of -- of Miami back in
20 19 --

21 Q. And in drawing either those remedial
22 plans or any others have you ever had a court accept
23 ACS data as the basis for drawing those plans?

24 MS. HARLESS: Objection to form. You
25 can answer.

1 A. I can't recall; however, I do recall
2 seeing plans adopted by the -- the court that
3 included CVAP data.

4 BY MR. BOYNTON:

5 Q. Where were those plans? What
6 jurisdictions?

7 A. I -- I believe -- I believe the most
8 recent House delegate districts that the special
9 masters created had CVAP data included in the
10 report.

11 Q. Is -- is -- is that -- you mean the --
12 the Virginia state legislature case?

13 A. Yes, the Bethune-Hill.

14 Q. Okay. Do you know if the -- the court
15 actually approved a plan that was drawn from ACS
16 data as opposed to census data?

17 A. I -- I believe that that data was
18 included, and so I assume that they approved it with
19 the data. Whether they relied solely on that I am
20 not sure, but it was included.

21 Q. Were you a witness in that case?

22 A. No. No, but I drew the NAACP's plan
23 that they submitted.

24 Q. And that plan was not approved, correct?

25 A. Correct.

1 Q. Now, how accurate is the ACS compared to
2 the census, in your experience?

3 A. It -- it's difficult for me to -- to
4 quantify that. They're two different types of
5 surveys. One is a sample survey and the other is a
6 -- theoretically a hundred-percent count.

7 Q. But theoretically a hundred-percent
8 count would be more accurate than a survey of fewer
9 than a hundred percent, correct?

10 A. It should be, but there is something
11 called an undercount that misses individuals, and so
12 you may end up with a lesser accurate on a
13 100-percent count than the ACS.

14 Q. But the census is always counting more
15 people than the ACS is counting in any given year,
16 correct?

17 A. When you say counting more people they
18 are sur -- surveying more people. Is that -- is
19 that what you're saying?

20 Q. Fair correction. Yes.

21 A. Yes, they -- they are surveying more
22 people. But, as I said before, there is an
23 undercount, and so the sample may actually end up
24 being more accurate on occasion.

25 Q. How would you know when that has

1 occurred?

2 A. The only -- the only probably time that
3 you could probably get an idea is they do an
4 estimate of how -- the accuracy of the census. And
5 so after -- or -- or during the census they do a
6 parallel accuracy test. And so theoretically you
7 could see in a particular state maybe where the
8 accuracy was -- was lower or less than, say, the
9 margin of error for the ACS.

10 Q. Have you seen that in any instance
11 involving the State of Virginia --

12 A. No, not --

13 Q. -- where the ACS data appears to be more
14 accurate than the actual census data?

15 A. No. I'm just saying that there is a
16 possibility.

17 Q. I understand.

18 Other than using demographic data to
19 draw maps, what knowledge or information do you draw
20 upon as to how minorities vote in a pattern or
21 trend?

22 MS. HARLESS: Objection to form. You
23 can answer.

24 A. I assume you are trying to ask whether I
25 have any familiarity of the pattern of vote for,

1 say, African American or Hispanic, La -- Latino and
2 Asian votes -- voting. Is that what you're
3 referring to I guess?

4 BY MR. BOYNTON:

5 Q. But what do you know about voting
6 patterns of various minority groups in Virginia
7 Beach?

8 A. It -- I have not analyzed Virginia
9 Beach, but in the south there is a -- a -- a racial
10 polarization that exists, unfortunately, where
11 racial groups tend to vote very similarly along race
12 lines. And so that's the pattern that exists.

13 Q. And you know that from what information?

14 A. Oh. I -- I've seen and read throughout,
15 I guess, the years racial polarization analyses
16 that, you know, experts have created and developed
17 along the way.

18 Q. And that is constant throughout the
19 southern United States?

20 A. It -- it is -- it permeates much of the
21 -- the south. It actually exists throughout the
22 country in certain areas. So not just the south,
23 but it permeates a -- a little heavily in the
24 southern areas.

25 Q. But what do you know about how Hispanic

1 voters in Virginia Beach behave or what their voting
2 trends are?

3 A. Oh. I haven't analyzed that.

4 Q. What do you know about Asian voters in
5 Virginia Beach, what their voting trends are?

6 A. Haven't analyzed that.

7 Q. You will not be offering testimony at
8 trial as to voter cohesion or polarization in the
9 Hispanic or Asian communities in Virginia Beach?

10 A. That is correct.

11 Q. Okay. So going to your methodology on
12 page 3 of your report, Exhibit 6 --

13 A. Yes.

14 Q. -- you make the statement under
15 Methodology, "First, I generated maps including the
16 Plaintiffs' addresses to determine whether each
17 Plaintiff is contained within one of the
18 majority-HBACVAP districts for each of the
19 previously developed demonstrative plans."

20 So you did that step for all six plans;
21 is that correct?

22 A. That's correct.

23 Q. And you learned in doing that that none
24 of those six plans contained Georgia Allen's
25 address, correct?

1 A. Correct.

2 Q. Okay. And so from that, going to page 5
3 then in your report -- and I'll take a moment so
4 you're there.

5 A. Yes. I'm here.

6 Q. So you applied the plaintiffs' addresses
7 on each of six maps you prepared, you reviewed the
8 Illustrative Plan and all alternative plans to see
9 if they were included. They were not, and so you
10 say, Where necessary, I then modified the
11 Illustrative Plan, Alt Plan 1, and Alt Plan 2 to
12 contain both Plaintiffs' addresses in either of the
13 majority-HBACVAP districts and generated maps to
14 confirm the results.

15 That was the next step?

16 A. Correct.

17 Q. Okay. And you say "where necessary."
18 What did you mean by that term?

19 A. Well, the District 1 wasn't modified at
20 all.

21 Q. So why did you deem it necessary to
22 modify the three District 2s in -- in the
23 illustrative, the Alt 1 and the Alt 2 to include
24 Georgia Allen's address?

25 A. To include the plaintiff's address.

1 Q. What made that necessary, in your
2 opinion?

3 A. They weren't contained inside the
4 district, or a -- a Hispanic, black and Asian CVAP
5 district.

6 Q. And you believe that needed to be
7 changed?

8 A. Correct.

9 MS. HARLESS: Objection to form.
10 BY MR. BOYNTON:

11 Q. So turning your attention then to page
12 6, it appears that your Table 2 on page 6, and -- as
13 well as your Table 3 on page 7, has a kind of a -- a
14 range of HBA CVAP percentages with the lowest being
15 50.75 and the highest being, at least for District
16 2, 52.11. Correct?

17 MS. HARLESS: Objection to form.

18 A. Cor -- correct for the illustrative
19 original plans.

20 BY MR. BOYNTON:

21 Q. Okay. Well, I -- I'm looking at Table
22 2. And you're -- you've got -- the first three rows
23 are the original plans and then the next three rows
24 are the modified plans, correct, in Table 2?

25 A. Correct.

1 Q. And the lowest of the percent HBA CVAP
2 under the ACS '14 to '18 series is the 50.75 for the
3 original illustrative District 2, correct?

4 A. Correct.

5 Q. And the highest percent HBA CVAP under
6 the ACS '14 to '18 series is the original Alt 2
7 District 2, correct?

8 MS. HARLESS: Objection to form.
9 Mischaracterizes.

10 BY MR. BOYNTON:

11 Q. You can answer.

12 A. Correct. And let me make sure that --
13 that I -- heard correctly. You said 50.75 was the
14 lowest and 52.11 was the highest.

15 Q. I see 52.16, so I -- I misspoke. So
16 52.16 is actually the highest, right?

17 A. Correct. I'm reading -- yes, that is
18 correct. 52.16 is the highest.

19 Q. And so all three of the modified
20 districts are between those two extremes, correct?

21 A. Correct.

22 Q. Was that a target of yours or did that
23 just work out that way?

24 MS. HARLESS: Objection --

25 A. It just worked --

1 MS. HARLESS: -- to form.

2 A. It just worked out that way.

3 BY MR. BOYNTON:

4 Q. Okay. And in -- in modifying the plans
5 to include Georgia Allen's address the percent HBA
6 CVAP under the '14 to '18 ACS series went down for
7 both Alt 1 and Alt 2 as modified, correct?

8 A. Could you repeat that?

9 Q. Sure. In modifying plans Alt 1 and Alt
10 2 to include Georgia Allen's address the percent HBA
11 CVAP under the ACS '14 to '18 series declined in Alt
12 1 and Alt 2 from what it was previously?

13 A. One of the plans increased for -- the
14 Illustrative Plan, the original, and Alt 1 and Alt 2
15 decreased.

16 Q. Okay. Now, you make a note at the
17 bottom of that chart that says, Note: 14 to 18 ACS
18 is 2014 to 2018 5-year ACS. Total Hispanic (HCVAP),
19 Black (BCVAP), and Asian (ACVAP) may not sum to
20 HBACVAP percentage due to summing totals prior to
21 disaggregation.

22 Can you explain that sentence to me,
23 please?

24 A. Sure. There are two ways of
25 disaggregating the data. You can disaggregate each

1 of the -- the attributes of the racial components,
2 Hispanic, white, black, Asian, and then total after
3 the disaggregation, then total Hispanic, black and
4 Asian to get the HBA. That can give you a -- an --
5 a total population that's equal to the sum of the
6 parts. Or you can total and create a category of
7 total for the Hispanic, black and Asian combined and
8 then disaggregate the total.

9 The second one is more accurate for the
10 -- the total. The other one -- the other way
11 actually provides you with a hundred-percent sum of
12 the three race and ethnicity categories.

13 Q. The -- the piece I'm not understanding
14 as a lay person is how it wouldn't sum to a hundred
15 prior to disaggregation. I get it when you pull it
16 apart and put it back together things shift, but why
17 is it not summing to a hundred before you're
18 disaggregating?

19 A. It -- no. It -- it -- what happens is
20 there is a -- a -- a -- some type of disaggregation
21 error that occurs with each one of the fields. And
22 so when you disaggregate for Hispanic, black and
23 Asian and then sum it up at the end you're going to
24 get the sum. It's just mathematics. You're going
25 to get the total. However, when you total in the

1 beginning and then disaggregate, that disaggregate
2 -- that disaggregation error exists whereby it's not
3 equal to -- or it may not be equal to the sum
4 Hispanic, black and Asian combined.

5 And so the focal point really is where
6 do you want the focal point to be with and the more
7 accurate amount. Do you want -- do you want it to
8 be after you disaggregate in total, which you may
9 include a disaggregation error associated with
10 totaling, or do you want to eliminate that from the
11 beginning and then have the most accurate depiction
12 of the total. So it's a question of whether you
13 want the -- the 100 percent to be the sum of the
14 three areas or you want a more accurate total.

15 And so in this particular case you want
16 a more accurate total because potentially you are
17 summing the disaggregation error for the Hispanic,
18 the disaggregation error for the black, the
19 disaggregation error for the Asian, and you're
20 summing that up to a total at the end. And so you
21 end up with potentially three different
22 disaggregation errors versus really one.

23 Q. Okay. So what you're really saying, I
24 think, and please correct me because I may be wrong,
25 they -- they may not sum to some extent due to

1 summing totals -- when it -- when you say summing
2 totals prior to disaggregation the -- the issue is
3 you're summing them and then you're disaggregating?

4 A. Correct. Correct.

5 Q. And it's -- it's not that the error
6 occurs in the -- in the -- in the pre-disaggregation
7 phase?

8 A. No. It -- when you sum in the beginning
9 you know that there is an accurate total, and so you
10 know that the total is an accurate total when you
11 sum in the beginning. When you sum at the end
12 potentially you have the disaggregation -- or,
13 rather, let me backtrack and say when you sum in the
14 beginning you have a disaggregation of -- of one
15 field and that's the total. When you sum at the end
16 you have a disaggregation of potentially three
17 fields; Hispanic, black and Asian. And so if you
18 are concerned about the total, then you would use
19 the one where you disaggregate only the total. It
20 would only have that disaggregation of the total.

21 If we were concerned about each of the
22 individual racial components -- race and ethnicity
23 components, then we would do it the other way. But
24 in this instance to a certain extent we're concerned
25 mostly with the total HBA CVAP not the individual

1 Hispanic, black and Asian combined statistics.

2 Q. Okay. Thank you.

3 And the reason there is a disaggregation
4 or summing error at all is because the ACS provides
5 data at the block group level and you're trying to
6 distill it down to a smaller sector of blocks,
7 correct?

8 A. Correct.

9 Q. And when you talk about blocks you're
10 using voting tabulation districts as -- as what
11 you're building it back up into?

12 A. Correct. As well as the -- the district
13 itself.

14 Q. What prompted you to include a black and
15 white mixed-race data in this report?

16 A. Okay. It's commonly used many times,
17 and -- and it shows you, I think, more of a -- a
18 true depiction of -- of the racial component. And
19 -- and, you know, black and white is many times the
20 most -- or the largest mixed-race category in many
21 areas -- not in all but in many areas.

22 Q. Do you have any knowledge of mixed-race
23 voting behavior in Virginia Beach?

24 A. No. No. I -- I do know that -- that
25 many times people look at the combined race when

1 they're calculating sometimes the racial
2 polarization, and so they'll --

3 Q. And --

4 A. -- over the course of --

5 Q. But it would not be your role in this
6 case, correct?

7 A. That's correct. That's correct.

8 Q. And do -- did you not -- and you said, I
9 believe, that there was Hispanic white mixed-race
10 data available from ACS. Did I misunderstand that?

11 A. No. No, not Hispanic white. It would
12 be -- I think you mentioned white and Asian.

13 Q. Okay. So there is white and Asian
14 mixed-race data from the ACS available to you?

15 MS. HARLESS: Objection. Asked and
16 answered.

17 BY MR. BOYNTON:

18 Q. You can answer.

19 A. Yes. Yes, but I -- I didn't add it. I
20 -- I -- I didn't add it.

21 Q. Is there reason why you chose one
22 mixed-race group to add and not a second mixed-race
23 group to add?

24 A. Yes, because usually -- usually black
25 and white is the largest mixed-race category.

1 Usually. It may not be in this particular case, but
2 I was using the general rule of thumb.

3 Q. Now, is -- is that rule of thumb
4 published anywhere that you can refer to?

5 A. No. It's just in -- in reports many
6 times people will -- you'll see that people -- or I
7 have seen where they'll add either black and white
8 or the entire combined black is what I've -- I've
9 seen and focused upon.

10 Q. Well, when drawing the planned
11 districts, and I'm referring to Alt 10 in this
12 instance, for your supplemental report did you
13 consider the residence of any incumbents?

14 MS. HARLESS: Objection to form.

15 A. I did not consider the residence of any
16 incumbents. I -- in that first report I had an
17 overlay of the incumbents.

18 BY MR. BOYNTON:

19 Q. I'm sorry. That was the original
20 report; is that correct?

21 A. Correct.

22 Q. And -- and so when you prepared the six
23 report -- or the six plans in the rebuttal report
24 you did not at any point overlay residence addresses
25 of incumbents?

1 A. Correct.

2 Q. And when you prepared the three new
3 District 2s under your supplemental report you did
4 not overlay or consider residence address of
5 incumbents?

6 A. Correct.

7 Q. Sitting here today, do you have any
8 knowledge as to where or in what districts any
9 incumbents would reside under this plan, either of
10 these three plans that are modified?

11 A. No, not without referring to the -- you
12 know, the original report map that I did. And I
13 would imagine that it didn't -- since there were
14 slight changes it would be very similar to that --
15 that map.

16 Q. Did you go back and see if there had
17 been any changes on City Council with respect to
18 members of City Council since that first map?

19 A. No. No, I did not.

20 Q. So you made no attempt to separate each
21 incumbent into a single residence district in
22 District 2 among any of these three modified maps?

23 A. No. No. That wasn't the purpose of --
24 of -- of this first prong of Gingles, if you will.

25 Q. Okay. And so circling back to something

1 we started to talk about earlier, on page 7, in the
2 second-to-last paragraph on the bottom, you note
3 that, The modified Illustrative, Alternative 1 and
4 Alternative 2 plan's HBACVAP percentages using the
5 2013 to 2017 5-year ACS data for District 1 were
6 50.03, 51.50 and 51.4 -- 04 percent, respectively,
7 and 50.24, 50.87, and 50.71 percent, respectively
8 for District 2.

9 So does that refresh your recollection
10 as to whether you overlaid the ACS '13 to '17 data
11 series on the new three District 2s?

12 A. Yes, I did review those, but I think
13 there was a different question that you asked, but I
14 did look at that.

15 Q. You -- so you considered that and you
16 put it in your report. Why did you put it in your
17 report?

18 A. Just to show that they were above in
19 both of the plans. I -- we're looking or using the
20 2014 to 2018, but it's just a good thing to -- to
21 look at the 2013-2017 ACS, but --

22 Q. Did you look at any other five-year ACS
23 data series for the three new maps?

24 A. No. No.

25 Q. And I think you previously testified you

1 did not use 2010 census HBA VAP data for that
2 purpose either.

3 A. Correct, because it doesn't exist.
4 That's right.

5 Q. Oh. Well, what does exist?

6 A. I mean the 2010 CVAP. I'm sorry. I
7 thought you said 2010 CVAP. I did not --

8 Q. VAP.

9 A. Right. I did not use the 2010 VAP data
10 and look at that. I -- it's -- it's included, of
11 course, in the reports. Yeah, I include it in the
12 -- the table reports.

13 Q. Did you calculate the percent H -- or
14 the HBA VAP percentages for these three new
15 districts using 2010 census data? Is it in your
16 report anywhere?

17 A. Let me reflect because I used some of
18 the reports in the appendices, but in order to save
19 space because I wanted to include the 2013-2017 and
20 the 2014 and 2018 I removed some of the -- or one of
21 the tables that were included. So I'd have to
22 refresh my memory on the appendix.

23 Q. Well, take your time. Take your time to
24 do that, please.

25 A. Okay. So I see that the 2010 voting age

1 population -- total population and voting age
2 population I included.

3 Q. Where is that, sir? Give me a page,
4 please.

5 A. Sure. If you go to page 29, the -- the
6 second table. It's a little difficult,
7 unfortunately, because it's -- it's in portrait mode
8 and not in landscape mode, but that second table is
9 -- where it says 18 Pop that's the voting age
10 population.

11 Q. From the 2010 census?

12 A. Correct.

13 Q. Okay. But if I look across and I see
14 District 2 at HBA VAP percent 49.24, then that is
15 the comparative number for the 2010 census for the
16 Illustrative Plan District 2 as modified?

17 A. Correct.

18 Q. So that district would not be majority
19 minority under the -- or not majority HBA per the
20 2010 census data?

21 A. Correct, in 2010.

22 Q. And you did that for all three of the --
23 the new districts?

24 A. That is correct.

25 MR. BOYNTON: Okay.

1 MS. HARLESS: Chris, when you get to a
2 good place, we've been going for a while, so I think
3 it might be -- I need to take a quick break.

4 MR. BOYNTON: That's fine. Let's take a
5 break. What do you want to say; ten minutes?

6 MS. HARLESS: Yes. That works.

7 MR. BOYNTON: Okay. Sounds good.
8 Thanks everybody. I appreciate the patience with
9 it.

10 (Recess)

11 BY MR. BOYNTON:

12 Q. Back on the record.

13 Mr. Fairfax, you mentioned earlier the
14 traditional criteria for redistricting. What are
15 they?

16 A. There are several traditional criteria
17 that are somewhat universal. And the ones that are
18 universal includes equal population, trying to
19 equally populate the districts; contiguity,
20 attempting to make sure that they're joined together
21 -- all parts of the districts are joined together.
22 And, of course, there are exceptions to the rules
23 with each one of these. Compactness, which has to
24 do with disperse -- or dispersion or irregular
25 configurations of the district and there are

1 measurements to try to measure that. Another one is
2 the political subdivision splits, trying to minimize
3 political subdivision splits, so you're looking to
4 minimize county splits or city splits or what's
5 called voting tabulation districts -- splits of
6 those, and precinct splits. And then communities of
7 interest, which is the most -- the largest -- the
8 wide-ranging of all of them, and it could be an
9 interest of in -- income or education or poverty or
10 crime or some issue that's relevant to a particular
11 community. And those are sort of the -- the -- the
12 five sort of main traditional redistricting
13 criteria, but there are several others from state to
14 state and jurisdiction to jurisdiction that apply.

15 Q. Okay. And you considered all five of
16 those areas, those criteria, in preparing these
17 three maps?

18 A. Yes.

19 Q. Where does drawing districts on the base
20 of race or national origin fit in those traditional
21 criteria?

22 A. Well, the -- the courts have ruled race
23 can't predominate. And there is sort of a gray area
24 for Section 2 lawsuits where the objective is for
25 race to be proven, if you will, in creating a

1 sufficiently large and geographically compact
2 district. But in -- in the case that I try to do
3 and I try to use -- or develop a plan where race
4 becomes one of many factors, if you will. And so
5 you're trying to achieve all of -- all of the
6 traditional redistricting criteria, including the
7 aspect of race being -- or the district being above
8 50 percent CVAP.

9 Q. And clear -- clearly your efforts here
10 were to draw two majority minority districts, which
11 necessarily considers race as a predominant factor
12 in drawing, correct?

13 MS. HARLESS: Objection to form and it
14 calls for a legal conclusion.

15 BY MR. BOYNTON:

16 Q. Well, tell me your conclusion, sir.

17 A. I -- I -- I would -- I would say that
18 you attempt to draw a 50-percent CVAP district in
19 addition to following all the other traditional
20 redistricting criteria.

21 Q. And race was a factor in drawing these
22 districts, correct?

23 A. It -- it was a factor, yes.

24 Q. Now, how did you consider compactness
25 when you drew the plans for the supplemental report?

1 A. Well, most of the time if -- if you're
2 looking and you're drawing a district you can tell
3 whether something is -- visually tell whether
4 something is not compact or less compact when you're
5 actually adding on areas. And so as you're adding
6 on areas you can visually see. And then, of course,
7 when you get to a good stopping point you run a
8 report and then you look at -- you can look at the
9 measurement to see if what you thought was right or
10 not. And, of course, you don't do that every time
11 you make a change. You just do it periodically.

12 And so as you're developing -- as I'm
13 developing a plan I would visually look and see if
14 something is more compact. And usually you're --
15 you recognize sort of the measurements and how they
16 actually work, and -- and you develop according to
17 that. And that means no fingers sticking out
18 somewhere, try to have less squiggly lines, things
19 of that nature, as you're drawing, as you're
20 developing the plan.

21 Q. So what are the measures of compactness
22 that you used in the supplemental report?

23 A. I use the Reock, Polsby-Popper, and the
24 Convex Hull.

25 Q. Do you have one that -- one of those

1 three tests you consider more reliable or most
2 reliable?

3 A. No. No. And that's why you use three.
4 That's why I use three. Because every district or
5 jurisdiction may have sort of biases that favor or
6 disfavor according to one particular compactness
7 measurement. And so you use three to sort of break
8 the decision point, if you will. If you use two,
9 you may have two that disagree. Three you can at
10 least look at two of the three and -- and make a
11 determination.

12 Q. So in -- in using all three of these
13 compactness measurements did illustrative District 2
14 -- when it became modified illustrative District 2
15 did it become more or less compact?

16 A. I -- I believe -- and I want to check,
17 but I believe it became less compact.

18 Q. It is on page 8, sir. You're welcome to
19 look at it.

20 A. Yes. Okay.

21 Yes. I believe it became less compact.

22 Q. Under all three measures?

23 A. Under all three measures -- Alter --
24 Alternative 1 actually became more compact under the
25 Reock measurement.

1 Q. Okay. And I was -- sir, I was still on
2 the illustrative mod District 2.

3 A. Okay. I'm sorry. Yes, under all three
4 measures it became less compact.

5 Q. Okay. And -- and under -- for Alt
6 District 1 versus Modified Alt District 1 the
7 modification became less compact under two of the
8 three metrics; is that correct?

9 MS. HARLESS: Objection --

10 A. That's correct.

11 MS. HARLESS: -- to form.

12 I'm sorry. I think you said District 1.

13 BY MR. BOYNTON:

14 Q. I -- I -- I did. That was my question.

15 A. District 1.

16 Q. Under the mod -- Alt -- under Alt -- Alt
17 1 -- I'm sorry. Let me rephrase to get it clear.

18 Under the modified Alt 1 for District 2
19 as compared to the original Alt 1 for District 2 did
20 two of your three metrics show the modification
21 becoming less compact?

22 A. Correct.

23 Q. And that was the Polsby-Popper and the
24 Convex Hull calculations?

25 A. Correct.

1 Q. And for Alt 2 modified District 2 the
2 Polsby-Popper and the Convex Hull also showed the
3 modification of Alt 2 being less compact than the
4 original Alt 2 for District 2, correct?

5 A. Correct. At -- at 1 you're talking
6 Polsby-Popper and Convex Hull; is that
7 specifically --

8 Q. Yes.

9 A. -- what you said?
10 Yes.

11 Q. Yes, sir. Thank you.

12 So you say they did not change
13 significantly when compared to the original. What
14 would be a significant change compared to the
15 original districts?

16 A. I -- I would think that the significant
17 difference would, of course, depend upon each
18 measurement. And so, for example, I would think
19 that if -- if the Illustrative 2 for the original
20 plan went to -- say 1. -- for Reock went down to,
21 say, 1.5 let's say or 1.4, I would consider that
22 (audio interruption) significant.

23 THE REPORTER: I'm sorry.

24 BY MR. BOYNTON:

25 Q. You mean .1 --

1 THE REPORTER: I'm -- I'm sorry. Your
2 end --

3 BY MR. BOYNTON:

4 Q. -- 4 or --

5 A. I'm sorry. .1. I'm sorry. Yeah. .1.

6 THE REPORTER: The end -- the end of
7 your answer dropped off back there.

8 A. Okay. Let me repeat.

9 I -- I would think for Reock if -- if it
10 moved -- for example, the Illustrative Plan, it
11 moved from .24 to say .15, 14, 13, that may be
12 considered moving towards significant, although I --
13 I've seen measurements in -- in that range before.
14 But it would be a difference in -- with the
15 Polsby-Popper once again I would say also if it
16 moved from .2 to under .1, that -- that would be
17 considered probably significant. And Convex Hull
18 would -- since it -- it starts at a larger
19 measurement point, which is the -- the mid .5, I
20 would actually consider that having to go to maybe
21 point -- close to .3 or something -- .3 something.

22 BY MR. BOYNTON:

23 Q. Okay. Thank you.

24 Looking at page 28 of your supplemental
25 report...

1 MS. HARLESS: You mean the appendix,
2 right?

3 MR. BOYNTON: Oh. I -- I have it all
4 together as one exhibit, but -- and I think the
5 numbering is sequential. So it is page 28 as a
6 whole.

7 A. That's the map?

8 BY MR. BOYNTON:

9 Q. It is the map, yes, sir.

10 A. Yes.

11 Q. And specifically it is a zoom of
12 Illustrative Plan Modified District 2, correct?

13 A. Correct.

14 Q. Now, I -- I look at the map and in the
15 northeast corner I see that two areas, Lynch Lane
16 and Olivieri Lane, all the way up to Sullivan
17 Boulevard -- there's kind of a notch there. Do you
18 see where I'm talking -- the location I'm talking
19 about?

20 A. Let me -- let me zoom in and see if I
21 can -- you're referring to -- could you repeat what
22 you said?

23 Q. Lynch Lane and Olivieri Lane --

24 A. Yes.

25 Q. -- there is a divot or a notch.

1 A. Correct.

2 Q. Do you recall why that divot or notch is
3 there?

4 A. I recall when I developed the plan
5 trying to include Ms. Allen's address in a minimal
6 fashion but still maintain some reasonable
7 compactness.

8 Q. Do you -- do you have any -- sitting
9 here today, any sense of why that location of Lynch
10 Lane, Olivieri Lane, Bark Lane is not part of
11 District 2 as drawn there?

12 A. No. No. I -- I didn't focus on the
13 areas that I didn't include. I focused on the areas
14 that I did include. And so what I was trying to do
15 was include that address of Ms. Allen's and -- and
16 at the -- with the least amount of change as I could
17 but still in some type of compact fashion.

18 Q. Okay. And so in doing that you had to
19 cross North Witchduck Road and -- and create some --
20 some portion of the district on the east side of
21 Witch -- North Witchduck Road, correct?

22 MS. HARLESS: Objection to form.

23 A. Correct. Correct.

24 BY MR. BOYNTON:

25 Q. Do you know if in including Georgia

1 Allen in the district you split VTDs specifically to
2 get to Ms. Allen's address?

3 A. Yes. Correct.

4 Q. You did do that?

5 A. Yes.

6 Q. Do you recall how many VTDs you split to
7 get -- to reach Ms. Allen's address?

8 A. I -- I believe there were two split
9 VTDs -- additional VTDs. And -- and --

10 Q. Yes, sir.

11 A. -- let me al --

12 Q. Sure.

13 A. I'm sorry. Let me -- let me also say
14 that it -- it was possible to -- to split one. If
15 -- if I just followed the southern area of Witchduck
16 Road, I -- I could have added her address that --
17 that way, but, of course, that would have been, in
18 my estimation, considered not compact. And so --

19 Q. Okay.

20 A. -- in order to make it compact or
21 reasonably compact I added that extension on at the
22 top.

23 Q. Okay. And -- and that is the -- the
24 area right above Georgia Allen's name on the map?
25 You said you added a bit on the top. I'm trying to

1 figure out --

2 A. On -- on --

3 Q. -- what is the top.

4 A. On the -- I'm sorry. I'm sorry. On the
5 top of Witchduck Road, meaning that if -- if you
6 notice that below Witchduck Road there is an area
7 that's defined by -- below -- if you can turn the
8 map sideways and visualize it, below Witchduck Road
9 there is an area that actually could be added or
10 attempted to add to include Ms. Allen's address.
11 However, what I did was I added on this other area
12 that -- that was above that to make it more compact,
13 the area that's --

14 Q. All right. So --

15 A. -- to the north, if you will, of
16 Witch --

17 Q. Got you.

18 A. -- Witchduck Road.

19 Q. Where it says -- where -- where it says
20 Holladay Lane and going on toward Merrimac Lane --
21 that's the area north of North Witchduck Road you're
22 talking about?

23 A. That's correct. That's correct.

24 Q. Okay. Thank you.

25 And the area that you picked up to the

1 very north I guess west of the district -- can you
2 tell me kind of the boundaries of that?

3 A. The area that -- that you --

4 Q. You said you added because it had a high
5 concentration of HBA CVAP.

6 A. Oh, yes.

7 MS. HARLESS: Objection to form. You
8 can answer.

9 A. Okay. The question was --
10 BY MR. BOYNTON:

11 Q. What would be the area that you added to
12 Illustrative Plan Mod District 2 in the northwestern
13 quadrant of that modified district for the purpose
14 of including additional concentrations of HBA CVAP
15 voters?

16 A. Correct. Correct.

17 Q. Can you tell me where that is, the
18 boundaries, by street name?

19 A. I can't tell you by street name. It's
20 in that northern area up -- up top.

21 Q. So would that be along Diamond Springs
22 Road?

23 A. I would have to pull up the Maptitude
24 program to check.

25 Q. Okay. Sitting here today, you're --

1 A. But --

2 Q. -- not sure?

3 A. Right. And -- and all I am sure is that
4 there is a series of Hispanic -- I mean Hispanic,
5 black, and Asian combined subdivision that exists in
6 that area, and so I added that --

7 Q. And you picked (audio interruption)
8 adding race -- additional members of those races to
9 the district?

10 MS. HARLESS: Objection to form. I -- I
11 didn't hear that question. I just heard the last of
12 it.

13 A. Yes, sir.

14 MR. BOYNTON: Could you read it back?

15 THE REPORTER: I didn't hear the first
16 of it either.

17 BY MR. BOYNTON:

18 Q. Okay. And you added that partial VTD to
19 pick up additional Hispanic, black and Asian voters,
20 correct?

21 MS. HARLESS: Objection to form.

22 BY MR. BOYNTON:

23 Q. You may answer.

24 A. I added several subdivisions that exist
25 in there. It's -- it's a -- it's a complete block

1 group similar to, I guess, a -- a neighborhood
2 section or subdivisions that are a majority
3 Hispanic, black and Asian combined. At least some
4 of them were close to Hispanic, black and Asian
5 combined, a majority Hispanic, black and Asian
6 combined. I added those to the district.

7 Q. And that was for the purpose of -- of
8 increasing the concentration of those races in the
9 district, correct?

10 MS. HARLESS: Objection to form.

11 BY MR. BOYNTON:

12 Q. You may answer.

13 A. That was for the purpose of achieving a
14 -- a majority Hispanic, black and Asian CVAP
15 district.

16 Q. Please turn your attention to page 42.

17 A. 42. Okay. I'm here.

18 Q. Okay. This you will agree -- or would
19 you agree that this map we're looking at is titled
20 Illustrative Plan Alt 2 Mod District 2 Zoom?

21 A. Correct.

22 Q. There's an area that looks like a V in
23 the northern part of the district -- or that's
24 excluded from the district along Brinson Road,
25 including Whitman Lane and Olivia Grove Lane. Do

1 you see that area?

2 A. Yes. Yes, I do.

3 Q. Do you recall, sitting here today, why
4 that area is not included in the modified District 2
5 under Alt 2?

6 A. Because I wanted to contain Ms. Allen's
7 district in a minimal configuration that was
8 compact, and so I added those three block groups.
9 That wasn't one of them.

10 Q. Do you know why that particular group
11 was ex -- that particular area was excluded?

12 A. It -- it wasn't needed to add to include
13 Ms. Allen's address.

14 Q. Would you agree that not having a -- a
15 clean line across the area of where Brinson Avenue
16 is decreases the compactness of the district?

17 MS. HARLESS: Objection to form.

18 A. I had already added in a block group
19 that -- that I most likely did not have to increase
20 the compactness, and I didn't see it necessary to
21 add an additional block group.

22 BY MR. BOYNTON:

23 Q. Does -- does that configuration not
24 appear awkward to you, sitting here today?

25 A. Well, block groups attempt to follow

1 neighborhood patterns. They -- they attempt to do
2 that, the census bureau. And so what may be awkward
3 may be because of the patterns of -- the
4 neighborhood patterns, how the -- they segmented out
5 the area. So it -- it may look a little awkward,
6 but it may reflect the residents inside. And that's
7 just from a general standpoint.

8 Q. Is it your testimony that you drew that
9 area out of the district that was a separate block
10 group?

11 A. It is a separate block group, yes. And
12 -- and I don't know how far it goes, but since I
13 only used block groups that's contained within a --
14 a -- a -- another block group.

15 Q. And so do you know if it's within the
16 same VTD as areas in the Illustrative Plan Alt 2 Mod
17 District 2?

18 A. It -- it may be. I'm not sure at this
19 particular moment whether it's contained within the
20 same VTDs. As I mentioned before, that one of the
21 objectives of this is to develop a plan consisting
22 only of block groups because of the concern of --
23 Dr. Morrison has had of this disaggregation process.

24 Q. Okay. So how did you consider political
25 subdivision splits in preparing your plans?

1 A. I considered not splitting the political
2 subdivisions as -- as much as possible. In this
3 particular case it was the VTDs, or voting
4 tabulation districts. So I tried to minimize the
5 splitting of those and still achieve the objectives
6 of -- of the -- the plan.

7 Q. So in this context you consider
8 splitting a VTD to be a political subdivision split,
9 correct?

10 A. Correct.

11 Q. And in this context, although you did
12 not use actual precincts, you were splitting
13 precincts that would also be a political subdivision
14 split in this context, correct?

15 A. Correct.

16 Q. When you say at page 8 of your report --
17 and take a moment to get back to it --

18 A. Okay. I'm there.

19 Q. -- that, "Once again, the political
20 subdivision splits of District 2 in the
21 Illustrative, Alternative 1, and Alternative 2 plans
22 were...not significantly altered after modifying the
23 Plans..." -- what do you deem to be a significant
24 alteration for -- of -- of amount of political
25 subdivision splits?

1 A. Under the context of where we stand with
2 these splits, I -- I -- I would say probably leaning
3 toward four splits or something like that. And
4 again you're looking at the context of each
5 jurisdiction and each plan because in some
6 jurisdictions you just have to split.

7 And so in the context of this I'm
8 looking at the illustrative plan, the original one,
9 as a baseline, and I split two additional ones for
10 the first plan and one for the second and the other
11 one remained the same. The Alternative 2 remained
12 the same. And so that leads me to believe that
13 there wasn't a significant amount of splits created
14 by modifying the plans.

15 Q. And in Alt 2, which is the -- the
16 alternative where you use block groups,
17 interestingly that resulted in the most VTD splits
18 of these three plans, correct?

19 A. Yes.

20 Q. Why is that?

21 A. Because block groups automatically split
22 VTDs. Not automatically, but block groups don't
23 conform to precincts or VTDs. They're two different
24 purposes.

25 Q. Did you make any effort to overlay

1 actual city of Virginia Beach precincts on your maps
2 that you drew for the supplemental report?

3 MS. HARLESS: Objection. Asked and
4 answered.

5 A. And -- and I -- I missed the first part,
6 and I believe it was did I make any attempt to
7 overlay precincts?

8 BY MR. BOYNTON:

9 Q. Yes. Over the districts or over the --
10 yeah, the districts prepared in your -- your new
11 report, your supplemental report.

12 MS. HARLESS: Same objection.

13 BY MR. BOYNTON:

14 Q. You may answer.

15 A. No. As I had mentioned before, once I
16 noticed that the precincts split census blocks, I
17 opted to go with the VTDs as the primary entity
18 division of -- of -- of the -- of the plan.

19 Q. And is that your consistent approach
20 through all three reports, never applying census --
21 I'm sorry -- precincts to your reports?

22 A. Correct. And let me also say that I --
23 I -- I looked at it in the beginning, and the
24 majority of the precincts followed the VTDs. And so
25 I don't want the impression that they didn't follow

1 them the majority of times. The majority of the --
2 the precincts follow VTDs. There were some that
3 deviated and then some that actually deviated across
4 census blocks. So it's --

5 Q. So you looked at --

6 A. -- it's --

7 Q. You looked at that at one point in time,
8 the very beginning before your original report?

9 A. Right. Correct. But what I originally
10 did -- I think I mentioned this in the report. I
11 looked and analyzed the -- the precincts. And I
12 think I men -- mentioned this in the original
13 deposition, which was for the most part the -- the
14 precincts followed the VTDs; however, there were
15 some that did not follow. But I think the majority
16 of them followed the VTDs. However, once the --

17 Q. Do you know how many precincts there are
18 in Virginia Beach currently?

19 A. Offhand I -- I can't recall.

20 Q. Do you know if that number has changed
21 from 2010 to 2019?

22 A. No, I do not.

23 Q. And at no point in time did you lay
24 precinct districts over -- precincts over districts
25 in these three maps?

1 MS. HARLESS: Objection. Asked and
2 answered.

3 A. Correct. Once I decided that VTDs would
4 be the unit -- the component unit, then I stuck with
5 VTDs. I did not switch back to precincts.

6 BY MR. BOYNTON:

7 Q. Can you tell me how or the process for
8 accounting for voters when VTDs are split --

9 MS. HARLESS: Objection to form.

10 BY MR. BOYNTON:

11 Q. -- from within the district from outside
12 the new district?

13 A. Can -- can you clarify that, what you're
14 trying to ask?

15 Q. Mathematically -- well, let's start with
16 the baseline. You've said in your three modified
17 plans that Modified Illustrative District 2 split
18 seven VTDs, correct?

19 A. Correct.

20 Q. And Alt 1 Modified District 2 split
21 eight VTDs, correct?

22 A. Correct.

23 Q. And Alt 2 Mod District 2 split ten VTDs,
24 correct?

25 A. Correct.

1 Q. So in each of these instances where
2 we're splitting VTDs that is putting a portion of
3 the VTD in District 2 and a portion of the VTD
4 outside of District 2, correct?

5 A. Correct.

6 Q. So how do you allocate the population
7 for purposes of HBA CVAP analysis between the
8 portion of the VTD that remains in District 2 and
9 the portion that is outside?

10 A. Right. One of the reasons why you use
11 VTDs is they follow census blocks, whereas precincts
12 specifically when they are splitting blocks do not
13 follow census blocks. And so because census blocks
14 is a subcomponent of the precincts and we're
15 building the district using census blocks as the
16 smallest element, you're able to actually aggregate
17 the population. And, of course, that's -- you
18 determine CVAP after you do or provide -- perform
19 the disaggregation process, which brings it down to
20 the block level, and then you can rebuild that up to
21 each of the VTDs and -- and additional district
22 components.

23 Q. Turning your attention to Exhibit 7,
24 please, sir, behind the -- the full report that is
25 Exhibit 6...

1 A. I believe that's -- does that start --
2 where does that begin? What page number does that
3 begin?

4 Q. In the PDF I am not sure, but let's --
5 you have -- how many pages are on your report? It
6 looks like 47. It should be 48.

7 A. Okay. Yes.

8 Q. Okay. I will represent to you that this
9 is your -- or it's a zoom of your modified
10 illustrative plan which compares to the exhibit you
11 looked at on page 28 previously of your report.

12 A. (Moved head up and down.)

13 Q. Does that look accurate from a quick
14 review?

15 A. From -- from what I see, it -- it looks
16 accurate.

17 Q. Okay. I'd ask you to take a look at the
18 area that we were referring to before with Lynch
19 Lane and Olivieri Lane that is not in District 2.

20 A. Correct. Yes.

21 Q. I will represent to you that the yellow
22 lines represent precinct lines based on Virginia
23 Beach's 2019 precincts. Assuming that is accurate,
24 has the omission of Lynch Lane and Olivieri Lane
25 from District 2 split a precinct?

1 A. Yes.

2 Q. Similarly, the inclusion of Ms. Georgia
3 Allen's location or residence address on the extreme
4 eastern part of District 2 -- does that not also
5 split a precinct, assuming these precinct lines are
6 drawn accurately?

7 MS. HARLESS: Objection to form.

8 A. I believe you -- you're referring to the
9 northern end right at --

10 BY MR. BOYNTON:

11 Q. I'm -- I'm referring to the eastern end.
12 There's a number that says 48 --

13 A. Yes.

14 Q. -- which I believe is very close to
15 where Ms. -- Ms. Allen lives. Jericho Road.
16 Merrimac Lane. That area. District 2 is the -- the
17 bright fuchsia color.

18 MS. HARLESS: Objection to form.

19 MR. BOYNTON: I'm just trying to get him
20 oriented for now.

21 A. Sure. I -- I see that that's part of
22 the same precinct, yes, that Lynch Lane is in, if
23 I'm looking at the -- the yellow lines correctly.

24 BY MR. BOYNTON:

25 Q. Sir, what I'm asking you is, does the

1 inclusion of area 48 in District 2 split a precinct
2 with area -- or with District 6 on your map?

3 MS. HARLESS: Objection to form.

4 A. And -- and what I'm saying is is that
5 the same precinct, at least is what I see on my map,
6 that includes Lynch -- Lynch Lane -- they are
7 included in the same precinct. And so it's the same
8 precinct that includes Lynch Lane -- that split that
9 we just talked about is included in that number 48.
10 That's the same precinct.

11 BY MR. BOYNTON:

12 Q. Okay. But I guess I -- in looking at
13 the yellow lines as precinct boundaries --

14 A. Correct.

15 Q. -- and I'm -- I'm referring to 48 just
16 to orient you, not assuming that's a precinct
17 number.

18 A. Yes.

19 Q. And so that might have been my error.

20 A. Okay.

21 Q. But assuming that precinct lines are
22 accurately put on there as yellow lines on Exhibit
23 7 --

24 A. Yes.

25 Q. -- does the fuchsia area where Ms. Allen

1 lives -- does its inclusion in area 2 split a
2 precinct with portions of District 6?

3 MS. HARLESS: Objection to form. Asked
4 and answered.

5 BY MR. BOYNTON:

6 Q. You can answer.

7 A. Well, right. And -- and I guess what
8 I'm saying is it's included in the same split
9 precinct as before. So, yes, it includes. It's not
10 an additional split.

11 Q. But it's -- it's -- it's -- it's one
12 split when you look at Olivieri and Lynch Lane?
13 That's what you're telling me?

14 A. Yes.

15 Q. I got it.

16 A. Yes.

17 Q. Okay. Turning your attention to Exhibit
18 8, which is very next page.

19 A. Yes.

20 Q. Looking at the V-shaped area at -- on
21 the northern portion of District 2, which is green
22 on this map, the -- the blue area that comes into
23 the green at the northern portion of District 2 with
24 Brinson Lane and Holladay Lane -- do you see that
25 area?

1 A. I see Brinson Arch. I don't see Brinson
2 Lane. Let me see. I -- I --

3 Q. Do you see the --

4 A. Yes, I see it now.

5 Q. -- the middle of the --

6 A. Yes. Yes.

7 Q. I'm referring to that area. It has
8 numbers 86 and 119 around it.

9 A. Yes. That is correct.

10 Q. You would agree that -- again we're --
11 the baseline assumption for this line of questioning
12 is that the yellow lines accurately represent 2019
13 Virginia Beach precincts. And so that -- that's an
14 assumption I'm asking you to bake into your answers.

15 A. Yes.

16 Q. Okay?

17 Okay. Assume -- assuming that, you
18 would agree that including the green area of -- of
19 Brinson Arch in the district but not including the
20 blue area that includes Brinson Lane splits a
21 precinct, correct?

22 A. Correct.

23 Q. Okay. And then -- and I think -- I'm
24 trying to learn your language here and -- and it's
25 not a language I speak every day. I'm not a

1 demographer. So I appreciate your patience in -- in
2 working with it.

3 A. Okay.

4 Q. There is a second precinct split when we
5 -- when you include Ms. Allen's address, correct?
6 That's a different precinct split?

7 MS. HARLESS: Objection to form.

8 A. Correct.

9 BY MR. BOYNTON:

10 Q. And the purposes of -- of including
11 those two areas in the District 2 Alt 2 as
12 illustrated was what?

13 MS. HARLESS: Objection to form.

14 A. The purpose of including those areas
15 were to include Ms. Allen's address and using block
16 groups in a compact form.

17 BY MR. BOYNTON:

18 Q. And -- and to maintain HBA CVAP above 50
19 percent, correct?

20 A. Exactly. Yeah. That was one of the
21 criterias, or one of the goals, if you will, in
22 addition to the other goal -- tra -- traditional
23 redistricting criteria.

24 Q. Okay. Did you consider communities of
25 interest in your plan for the -- your three plans

1 for the supplemental report?

2 A. Yes, insofar as the subdivisions.

3 Q. Okay. So tell me what -- what efforts
4 you made to determine communities of interest.

5 A. Which -- with each of those plans when
6 they originated I looked at the neighborhoods and
7 attempted to not split the neighborhoods or
8 subdivisions that existed in the plans. And -- and
9 I did the same thing for the modified plans, if I
10 could. And that's why when I added that extension
11 on the northern end that's a -- that's a complete
12 subdivision or group of subdivisions that were
13 Hispanic, black and Asian combined.

14 Q. Did you look at neighborhoods on a map
15 or did you assume from block groups or blocks what
16 was a neighborhood?

17 A. I looked at the subdivisions on a map.
18 I overlaid it on top of the district boundaries.

19 Q. What was the source of that map?

20 A. I pulled down the subdivisions from the
21 Virginia Beach website. They were GIS --

22 Q. So other than trying not to split
23 subdivisions what other efforts did you make to
24 identify and -- and -- and preserve communities of
25 interest in the same districts?

1 A. Well, in -- in the beginning -- what I
2 talked about in the beginning was that these areas,
3 census tracks that existed throughout the city, and
4 there was a commonality among these census tracks
5 within the city of Virginia Beach insofar as
6 Hispanic, black and Asian combined existed most of
7 the time similarly in income and -- and education, I
8 believe, and -- of the other ones I looked at in the
9 report.

10 And -- and so as I was building I was --
11 in the beginning of the report -- or, rather, the
12 original plan actually used that as somewhat of a
13 basis of these communities that would have --
14 communities of interest that would be gathered
15 together. And so the concept is, of course,
16 reviewing those census transactions and including
17 those census tracks in the plan to include
18 communities of interest within the plan.

19 Q. Okay. So can we go to your Illustrative
20 Plan Districts 1 or 2 map on page 14 of your
21 supplemental report, please?

22 A. Yes.

23 Q. Can you tell me within --

24 A. Just a moment.

25 Q. Are you there yet? I'm sorry.

1 A. Just a second. Yes.

2 Okay. Yes. I'm there.

3 Q. On page 14 you would agree that we have
4 the overview Illustrative Plan Districts 1 and 2 on
5 a map, correct?

6 A. Correct.

7 Q. And this is pre-modification, correct?

8 A. That's correct.

9 Q. Okay. So then we get to the
10 modifications at Appendix B; is that correct, page
11 26 and later?

12 A. Page 26?

13 Q. That's the -- the beginning of the
14 modified plans in your report.

15 A. Yes. Okay. Yes.

16 Q. Okay. On the very next page, 27, is
17 modified illustrative plan. That's the -- that's
18 the change that adds Ms. Allen's address and a
19 couple of other locations, correct?

20 A. Correct.

21 Q. Can you tell me on this map with --
22 within District 2 where the Hispanic neighborhoods
23 are located?

24 MS. HARLESS: Objection to form.

25 A. I could not tell you where Hispanic

1 neighborhoods are located. One, I wasn't just
2 looking at Hispanic neighborhoods.

3 BY MR. BOYNTON:

4 Q. Okay. Can you tell me in -- in District
5 2 where Asian neighborhoods are located?

6 MS. HARLESS: Objection to form.

7 A. No, I -- I couldn't tell you that. I --
8 I did look at the growth of each of the individual
9 race and ethnicities in that original report --
10 report and a dot density report. That may provide
11 some insight to where they're located.

12 BY MR. BOYNTON:

13 Q. But, sitting here today, you don't have
14 a -- a familiarity with neighborhoods as to
15 concentration of various minority groups in Virginia
16 Beach?

17 A. Not without going back to my original
18 report and referring to it. I would have to do that
19 because that provided some insight to where they're
20 located.

21 Q. Okay. Did you make any effort to in --
22 in this report or before identify, say, Filipino
23 neighborhoods as a subgroup of -- of Asian
24 neighborhoods?

25 A. No.

1 Q. Okay. Did you make any effort to
2 identify Cuban-concentrated neighborhoods as a
3 subgroup of Hispanic neighborhoods?

4 A. No.

5 Q. Can you point even to where a -- a
6 contempla -- a concentration of black voters are
7 within District 2?

8 MS. HARLESS: Objection to form.

9 A. I possibly could; however, I would have
10 to refer to my previous report to really be sure and
11 clear.

12 BY MR. BOYNTON:

13 Q. Well, looking solely at the map, you
14 don't have any sense of that?

15 A. I -- I have somewhat of a sense, but I
16 don't want to be inaccurate and -- and point out
17 something that -- that is incorrect.

18 Q. Well, what if -- again understanding
19 that you rely on your original report for specifics
20 and for data, I -- I would like to know your
21 understanding of -- of on this map where black
22 communities are concentrated.

23 MS. HARLESS: Asked and answered.

24 MR. BOYNTON: He has not answered.

25

1 BY MR. BOYNTON:

2 Q. Identify it, please.

3 MS. HARLESS: Same objection. He did
4 answer it.

5 THE REPORTER: I'm sorry, Ms. Harless.
6 I didn't hear you.

7 MS. HARLESS: I said same objection. He
8 did answer it.

9 THE REPORTER: Thank you.

10 BY MR. BOYNTON:

11 Q. Please identify the location on -- on
12 page 27 of -- of African American-concentrated
13 neighborhoods.

14 A. I --

15 MS. HARLESS: Same objection.

16 A. It -- it would be slightly difficult be
17 -- because I'd have to refer to my original
18 documentation because the purpose wasn't to locate
19 African Americans or Hispanic or Asians
20 individually. It was to create a district where
21 African Americans, Hispanic and Asians combined were
22 concentrated and was in a majority. And so that's
23 where I concentrated. So, you know, I did not focus
24 my attention on individual race or ethnicity groups.

25

1 BY MR. BOYNTON:

2 Q. So that was not part of your
3 communities-of-interest analysis, correct?

4 A. I -- I looked at that -- that's what I'm
5 saying. I'd have to refer to my original report to
6 see.

7 Q. Well, it's Exhibit 2, so why don't you
8 go ahead and do that.

9 MS. HARLESS: And you can take the time
10 you need to look at that, just to be fair.

11 A. Okay. I -- I can give you a summary.
12 If you're looking at the Hispanic
13 population, there is a concentration of His --
14 Hispanic population in that northern west end of
15 Virginia Beach right above that notch, if you will,
16 that's carved out that I -- I mentioned before that
17 reduces the compactness. There is another
18 concentration to the west of -- of -- the western
19 end of Virginia Beach of Hispanic population. And
20 there is another concentration in District 1, of
21 course -- not of course, but District 1, that's in
22 that bubble area, if you will, of District 1. And
23 there appears to be a -- a -- a concentration near
24 the western end of -- of District 1.

25

1 BY MR. BOYNTON:

2 Q. Those are all concentrations?

3 A. Yes. Hispanic.

4 Now, it's -- they're -- they're
5 populated throughout, but I think your question was
6 concentration. And so I'm making --

7 Q. Throughout?

8 A. Right. And I'm looking -- referring to
9 the dot density area map that I'm looking at.

10 Q. What page of your original report are
11 you on?

12 A. I'm looking at page 15 of my original
13 report, the map that shows the dot density. And the
14 first one is Hispanic population. Then I believe I
15 move over to black population. And then third would
16 be Asian population.

17 So there's a map that depicts -- excuse
18 me, as I went to the wrong page. There's a map that
19 depicts a dot density. And what dot density tries
20 to do is approximate the concentration of the
21 particular group that you're focusing in on. In
22 this case -- particular case it would be Hispanic
23 for the map.

24 Q. Okay. Did -- did you redo dot density
25 analyses for the 2014 through 2018 ACS series as

1 part of your supplemental report?

2 A. No, I did not.

3 Q. So the extent of -- of your knowledge of
4 Hispanic, black and Asian concentrations in Virginia
5 Beach are those three maps from your original
6 report, the dot density maps?

7 A. Yes. I mean this was the resulting
8 output that I -- that I looked at, but they were in
9 numerical format, if you will, before I did the dot
10 density, meaning that I came up with this as a -- a
11 way of de -- depicting where the Hispanic or where
12 the Asian, where the black population is, but in
13 doing so I, you know, went back and -- and attempted
14 to look at it visually in a variety of different
15 forms, but this was -- this was the one that was
16 selected.

17 Q. I understand. You took numbers, you
18 turned them into dots and put them on a map. I -- I
19 understand that process informs your --

20 A. Right.

21 Q. -- opinion about communities of interest
22 in Virginia Beach. But my question is, are there
23 any other sources of information? Have you ever
24 lived in Virginia Beach? Do you know any Virginia
25 Beach neighborhoods personally? Anything of that

1 ilk.

2 A. I've never lived in Virginia Beach.
3 I've been to Virginia Beach, of course, several
4 times, but I -- I'm certainly not an expert to talk
5 about life in -- in Virginia Beach.

6 Q. Or where certain ethnic or racial
7 minorities concentrate to live?

8 MS. HARLESS: Objection to form.

9 A. Well, no. No. I -- I -- I -- I think
10 when it comes to where -- when it comes to where
11 they reside, you definitely can tell using this map
12 where the concentrations of Hispanic, concentrations
13 of black and concentrations of Asians live. And
14 then, of course, the -- the objective really is the
15 Hispanic, black and Asian combined and not the
16 individual.

17 And so, once again, those maps actually
18 depict where they are concentrated insofar as census
19 tracks are concerned. So I do know and I'm familiar
20 with where they are located in concentrations at the
21 census-track level and to a certain extent the
22 subdivision level on -- on occasion.

23 BY MR. BOYNTON:

24 Q. But the -- the piece I'm trying to
25 understand is I -- I -- I -- I fully, I think,

1 understand your testimony that by virtue of having
2 received that data, having put it on a map and
3 identified the points on a map, that you have
4 familiarity from that source of -- of concentrations
5 of -- of -- of -- of various races and
6 national-origin groups in Virginia Beach. I'm
7 asking if you have any other sources of -- of that
8 knowledge.

9 A. No. Outside the data is I think what
10 you're referring to, I believe.

11 Q. Correct.

12 A. Right. Outside the data, no, I can't
13 say. I've been to Virginia Beach. I've been to
14 some of the neighborhoods, but that would be it.

15 Q. Thank you.

16 Did you consider where schools are
17 located in drawing the three modified districts --
18 District 2s?

19 A. No.

20 Q. Did you consider how streets divided the
21 districts in your plan?

22 A. Yes.

23 Q. How so?

24 A. In some type -- in some cases I tried to
25 follow streets along the way if -- if they split a

1 VTD.

2 Q. Did you talk with anyone in Virginia
3 Beach when you drew these three modified districts?

4 A. No.

5 MS. HARLESS: Objection to form.

6 A. No.

7 BY MR. BOYNTON:

8 Q. Okay. Thank you.

9 So let's turn back then to the
10 supplemental report, page 12.

11 A. Okay. I'm here.

12 Q. These are your conclusions, I believe,
13 on this page, correct?

14 A. Correct.

15 Q. Okay. You make the statement that, in
16 first paragraph, "Plaintiff Georgia Allen's address
17 was not contained with any of the original
18 demonstrative plans, but at least three of the plans
19 can be easily modified to include both Ms. Allen and
20 Ms. Holloway in majority-HBACVAP District 2, as
21 demonstrated in this report."

22 Do you see that sentence?

23 A. Yes.

24 Q. Okay. When you say that the three --
25 three of the plans can be easily modified there's an

1 inference that the other three plans are not as
2 easily modified, correct?

3 A. No.

4 Q. So you did not intend that inference?

5 A. No.

6 Q. Did you -- I think you said before, I
7 just want to confirm, that you did not actually
8 attempt to modify Alt plans 3, 4 or 5, correct?

9 A. Correct.

10 Q. So you don't know whether they're easily
11 modified or not, correct?

12 MS. HARLESS: Objection. Asked and
13 answered.

14 BY MR. BOYNTON:

15 Q. You can answer.

16 A. As -- as I mentioned before, I believe
17 that they can be easily modified, but I didn't see
18 any reason to modify them because these should have
19 been sufficient for this report.

20 Q. Do you expect to offer any opinions at
21 trial other than Modified Plans Illustrative
22 District 2 and 1, Modified Alt 1 Districts 1 and 2,
23 and Modified Alt 2 Districts 1 and 2?

24 A. I can -- let me just say that I -- I
25 plan on discussing the content of my reports.

1 Q. Do you rely at this point in time on any
2 plans other than the three that were modified in
3 your supplemental report and the corresponding
4 District 1s in those three plans?

5 A. When you say rely what are you referring
6 to?

7 Q. Well, you'll agree that plans 3, 4 and 5
8 at no point in time included Georgia Allen's
9 address. I think we've already answer established
10 that, correct?

11 A. Correct.

12 MS. HARLESS: Objection.

13 A. Correct.

14 MS. HARLESS: Asked and answered.

15 BY MR. BOYNTON:

16 Q. Do you expect to offer any opinions at
17 trial other than contained in your three reports to
18 date?

19 A. I don't expect to do so.

20 Q. Do you expect to further supplement your
21 reports at any point in time?

22 A. Not at this moment, no.

23 MR. BOYNTON: Give me a moment and we
24 will see if we are done. I think we're close.

25 MS. HARLESS: Okay.

1 MR. BOYNTON: Mr. Fairfax, thank you
2 very much for your time. You have a good afternoon.

3 THE DEPONENT: Thank you. You do the
4 same.

5 (Signature not waived.)

6 (The deposition concluded at 12:50 p.m.)
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CERTIFICATE OF DEPONENT

COMMONWEALTH OF VIRGINIA
CITY OF _____

Before me, this day, personally appeared ANTHONY E. FAIRFAX, who, being duly sworn, states that the foregoing transcript of this deposition, taken in the matter, on the date and at the place set out on the title page hereof, constitutes a true and complete transcript of said deposition.

ANTHONY E. FAIRFAX

SUBSCRIBED and SWORN to before me this _____
day of _____, 2020, in the jurisdiction
aforesaid.

My Commission Expires

Notary Public

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Kathleen Beard Adams, CCR, RPR, CRR, an
3 e-Notary Public for the Commonwealth of Virginia at
4 large, of qualification in the Circuit Court of the
5 City of Virginia Beach, Virginia, and whose
6 commission expires August 31, 2022, do hereby
7 certify that the within named deponent, ANTHONY E.
8 FAIRFAX, appeared before me via teleconference at
9 Hampton, Virginia, as hereinbefore set forth, and
10 after being first duly sworn by me, was thereupon
11 examined upon his oath by counsel for the respective
12 parties; that his examination was recorded in
13 Stenotype by me and reduced to computer printout
14 under my direction; and that the foregoing
15 constitutes, to the best of my ability, a true,
16 accurate, and complete transcript of such
17 examination.

18 I further certify that I am not related to
19 nor otherwise associated with any counsel or party
20 to this proceeding, nor otherwise interested in the
21 event thereof.

22 Given under my hand and notarial seal this
23 6th day of July, 2020.

24 _____
25 Notary Public

Certified Court Reporter No. 0313086